

Best practice and problem solving in child arrangements

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A meeting on parental alienation, PD12J and the rise of parenting disputes in the courts demonstrated the power of working together in a multi-disciplinary forum

On 13 May East and West Sussex Resolution regional groups combined with the Sussex Quality Circle in a meeting chaired by Verity Eunson-Hickey (chair of West Sussex). The aim was to consider best practice in disputes around child arrangements, and in particular the issues arising from parental alienation and the use (or lack of use) of Practice Direction 12J.

The Sussex Quality Circle was created by Martin Downs (1 Crown Office Row) and Nicola McGeown (East Sussex County Council) in 2017, as an organisation committed to improving and sharing best practice. The focus is on legal proceedings concerning children, with a multi-disciplinary focus, ie it is open to social workers, solicitors, barristers, legal executives, academics, LA lawyers, psychologists, psychiatrists, Cafcass, ISWs and the police. In that way, it is similar to Resolution. Sussex Quality Circle is complementary to organisations like Resolution, so this presented an excellent opportunity for the two organisations to work together and identify best practice in this fraught area of law.

Andrea Holtham, the service manager at Cafcass (Brighton) began by reminding all practitioners of the strains on the family justice system, as set out in the article by Anthony Douglas CBE (chief executive of Cafcass) written in January 2019 in Family Law. Cafcass figures record an increase of 23% since 2014 in the amount of families coming to court in respect of child arrangements, which, according to Mr Douglas, means more like one in three separating families resolve their dispute by issuing court proceedings rather than one in ten. The system, as we all know, is struggling to cope.

The result is that the volume of cases makes it a significant challenge to ensure there is sufficient court time and resources for the more serious cases.

Parental alienation

As Claire Clarke (issue 199) and June Venters QC (issue 200) have discussed recently, Cafcass has built on its evidence-based practice by producing the Child Impact Assessment Framework. The framework contains four guides to support Family Court Advisers (FCA):

- domestic abuse pathway;
- high-conflict pathway;
- children's resistance/reluctance;
- other forms of harmful parenting (eg substance misuse or mental health).

In a case where a child is refusing to spend time with one of their parents, the FCA will consider the guide in respect of a child's resistance/refusal, which will help the FCA report the child's experience to the court. We were all reminded that cases that involve alienation can become focused on the adults' experiences, rather than the voice of the child. We were also reminded that the impact on children of this form of harm can be lifelong – having an impact on their development and future relationships – so these cases should be taken seriously. In the past, these cases have often been allocated to junior practitioners and not taken sufficiently seriously.

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The biggest difficulty with cases involving alienated children is how to move on the family relationships and repair the damage, once this harm has been identified. In low-level cases, where only some alienating behaviours are identified, education can resolve the issue, for example via the SPIP or Positive Parenting Programme provided by Cafcass. However, where the behaviour is more serious, the solutions are often resource-intensive. Certainly a section 16.4 guardian should be appointed. Family therapists, specialist organisations and social workers working with the family can bring about positive



results, but not all families have the income required to access such resources. The question that practitioners must ask themselves is whether the behaviours are causing significant harm, and cross the threshold of local authority involvement.

The social workers and FCAs in attendance at the meeting wanted to remind everyone that it is incredibly difficult to ascertain children's wishes and feelings in cases that involve issues of alienation. To elicit a child's true feelings can be a

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lengthy piece of work, requiring the practitioner to gain the child's trust, and evaluate their actions as well as words. Sometimes Cafcass and even the local authority do not have the time or resources available.

We noted the judgment of the President in *Re L (A child)* [2019] EWHC 867 Fam, which involved a case which fell short of attracting the labels of “implacable hostility” or “parental alienation”. In that case, the President clarified that changing a child's residence should not be seen as a weapon of last resort:

“59. ... The test is, and must always be, based on a comprehensive analysis of the child's welfare and a determination of where the welfare balance points in terms of outcome. It is important to note that the welfare provisions in CA 1989, s1 are precisely the same provisions as those applying in public law children cases where a local authority may seek the court's authorisation to remove a child from parental care either to place them with another relative or in alternative care arrangements. Where, in private law proceedings, the choice, as here, is between care by one parent and care by another parent against whom there are no significant findings, one might anticipate that the threshold triggering a change of residence would, if anything, be lower than that justifying the permanent removal of a child from a family into foster care. Use of phrases such as “last resort” or “draconian” cannot and should not indicate a different or enhanced welfare test. What is required is for the judge to consider all the circumstances in the case that are relevant to the issue of welfare, consider those elements in the s1(3) welfare check list which apply on the facts of the case and then, taking all those matters into account, determine which of the various options best meets the child's welfare needs.”

The meeting agreed that one issue that can lead to poor outcomes for the children in these cases is a long period of time without any contact. Accordingly, we agreed that there would be an invitation to the judiciary in Sussex to agree a practice direction that when cases are identified as potentially involving high levels of alienation by Cafcass, the case should be transferred to a district judge and a fact-finding hearing should be prioritised. In order for the court to ascertain as soon as possible whether there was a justifiable reason for a child to be refusing to spend time with a parent (for example, past domestic violence), or whether the child was being alienated.

Practice Direction 12J

Thomas Brownrigg (Goodman Ray Solicitors) led the discussion on Practice Direction 12J. There is a lot of attention about whether PD12J is being applied appropriately and consistently by the court. Practitioners at the meeting had varying experiences of the court's approach, and agreed it is important there is greater consistency. There was concern that the courts is struggling to strike the right balance with the need to be proportionate and save resources, against the competing requirements of the Practice Direction, especially when it came to fact-finding hearings.

One further issue identified by the practitioners present is how to move matters on where a parent gives early instructions that their behaviour has not been acceptable, as it can take a long time before a Cafcass officer refers them to a Building Better Relationships course. Cafcass reminded practitioners that individuals can refer themselves to the Building Better Relationships course, although it would then come with a cost. There are other private providers of similar courses, which are more accessible and cost-efficient. It would be useful for practitioners to know which courses are recognised by Cafcass and the court as addressing the relevant issues.

Again, practitioners were reminded that the focus needs to be on the voice of the child and the child's experiences.

It was difficult to formulate any recommendations whilst these questions were being asked on a national scale, so the meeting decided to set up a survey of practitioners in the area to see if evidence could be generated to inform the national debate.

Conclusion

The co-operation between Resolution and Sussex Quality Circle led to all practitioners being better informed, a plan to invite a change to local practice, and a survey to gather evidence which will hopefully assist the national debate on Practice Direction 12J. I would suggest that this shows the power of Resolution working with partner organisations even at a local level.